

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Petition for Declaratory Ruling on the)	
Assignment of Accounts (Traffic) Without the)	
Associated CSTP II Plans Under AT&T Tariff)	
F.C.C. No. 2)	
)	
On Referral by the United States Court of Appeals)	WC Docket No. 06-210
for the Third Circuit)	
)	Internal File No. CCB/CPD 96-20
Combined Companies, Inc.)	
and)	
Winback & Conserve Program, Inc.,)	
One Stop Financial, Inc.,)	
Group Discounts, Inc.,)	
800 Discounts, Inc.,)	
)	
Petitioners,)	
)	
and)	
)	
AT&T Corp.,)	
)	
Respondent.)	

ORDER EXTENDING PLEADING CYCLE

Adopted: January 12, 2007

Released: January 12, 2007

Revised Filing Dates:

Reply Comments Due: January 31, 2007

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc., and Winback & Conserve Program, Inc. (the Inga Companies) filed a Motion for Extension of Time requesting that the Commission extend the period for all interested parties to file reply comments in the above-captioned proceeding from January 17, 2007, to February 16, 2007 at the earliest.¹ The Inga Companies state that this extension is necessary in order to permit the parties to seek and obtain additional guidance from the

¹ See *Comment Sought on Request for Declaratory Rulings, Pleading Cycle Established*, DA 06-2360, Public Notice (rel. Nov. 22, 2006).

district court as to the issues currently on primary jurisdiction referral to the FCC.² AT&T opposes the request, asserting that the question referred to the FCC by the district court is clear and does not need further clarification; thus no extension of time is necessary.³

2. It is the policy of the Commission that extensions of time shall not be routinely granted.⁴ In light of that policy, and given the limited scope of this proceeding, we will not grant an extension to await additional guidance from the district court. The Inga Companies' Request for Declaratory Rulings arises out of a primary jurisdiction referral made by the United States District Court for the District of New Jersey.⁵ The Inga Companies are plaintiffs in that court proceeding, which was stayed pending the FCC's resolution of the issue referred on primary jurisdiction. Specifically, the Commission was asked to determine "'whether section 2.1.8 [of AT&T's Tariff FCC No. 2] permits an aggregator to transfer traffic under a [tariffed] plan without transferring the plan itself in the same transaction.'" ⁶ In its *Order on Primary Jurisdiction Referral*, the FCC initially concluded that section 2.1.8 did not apply to transfers of traffic alone.⁷ The United States Court of Appeals for the District of Columbia Circuit, however, found that conclusion to be incorrect. That court declined itself to further interpret section 2.1.8.⁸ Following the D.C. Circuit's order, the Inga Companies moved to lift the stay in the district court proceeding, but that court found that the primary jurisdiction issue was still open. Accordingly, the district court directed the Inga Companies to "initiate an administrative proceeding to resolve the issue of precisely which obligations should have been transferred under § 2.1.8 of [AT&T's] Tariff No. 2 as well as any other issues left open by the D.C. Circuit's Opinion."⁹ Thus, the district court's June 2006 order asks us to revisit the issue previously presented.

3. As discussed in the 2003 *Order on Primary Jurisdiction Referral*, the Commission has broad discretion under the Administrative Procedure Act and Commission rules to decide whether a declaratory ruling is necessary to "terminate a controversy or remove uncertainty."¹⁰ When, as here, a petition for declaratory ruling derives from a primary jurisdiction referral, the Commission also will seek to assist the referring court by resolving issues arising under the Act.¹¹ That is our goal here. The district

² See Request for Extension of Time to File Reply Comments at para. 11 (filed Dec. 29, 2006).

³ See AT&T's Reply to Petitioners' Request for Extension of Time to File Reply Comments at 1, 4 (filed Jan. 5, 2007).

⁴ 47 C.F.R. § 1.46(a).

⁵ *Combined Companies, Inc. v. AT&T Corp.*, Civil Action No. 95-908, slip op. (D.N.J. filed May 19, 1995).

⁶ *Combined Co., Inc. v. AT&T Corp.*, No. 96-5185, slip op. at 3 (3d Cir. filed May 31, 1996) (quoting *Combined Companies, Inc. v. AT&T Corp.*, Civil Action No. 95-908, slip op. at 15).

⁷ *Joint Petition for Declaratory Ruling on the Assignment of Accounts (Traffic) Without the Associated CSTP II Plans Under AT&T Tariff F.C.C. No. 2 On Referral by the United States Court of Appeals for the Third Circuit*, Internal File No. CCB/CPD 96-20, Memorandum Opinion and Order, 18 FCC Rcd 21813 (2003) (*Order on Primary Jurisdiction Referral*), *pet. for review granted*, *AT&T Corp. v. FCC*, 394 F.3d 933 (D.C. Cir. 2005).

⁸ *AT&T Corp. v. FCC*, 394 F.3d at 939.

⁹ *Combined Companies, Inc. v. AT&T Corp.*, No. 95-908 (WGB), Order at 2 (D.N.J. filed June 1, 2006).

¹⁰ *Order on Primary Jurisdiction Referral*, 18 FCC Rcd at 21823, para. 15 (quoting 5 U.S.C. § 554(e); and citing 47 C.F.R. § 1.2; 47 U.S.C. §§ 154(i), (j); *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir.), *cert denied*, 414 U.S. 914 (1973)); *see also* 47 C.F.R. § 1.1 (the Commission will follow procedures which, in its opinion, best serve the purposes of the proceedings).

¹¹ *Order on Primary Jurisdiction Referral*, 18 FCC Rcd at 21823, para. 15; *see also* *Petition of Home Owners Long Distance, Inc. for a Declaratory Ruling that WorldCom Cannot Limit its Liability for Gross Negligence or Other Willful Misconduct Through its Interstate Tariffs*, 14 FCC Rcd 17139, 17145, para. 12 (Enforce. Bur. 1999).

court's June 2006 order does not expand the scope of the issue previously presented.¹² Rather, we have been asked to interpret the scope of section 2.1.8 of AT&T's Tariff No. 2, a matter already extensively briefed by the parties.¹³ Accordingly, we will not extend the reply comment period in this proceeding to await further direction from the district court. We grant a brief extension to the parties to file reply comments, which should be informed by this reminder as to the scope of the matter presented here. Specifically, we extend the deadline for filing reply comments until January 31, 2007.¹⁴

4. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 5(c) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 155(c), and sections 0.91, 0.291, 1.1, 1.2 and 1.46 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.1, 1.2, 1.46, the pleading cycle established in this matter shall be modified as follows:

Reply Comments Due: January 31, 2007

5. IT IS FURTHER ORDERED that the Motion for Extension of Time of One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc. and Winback & Conserve Program, Inc. is GRANTED in part and DENIED in part, as set forth herein.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin
Chief, Wireline Competition Bureau

¹² Moreover, in the *Order on Primary Jurisdiction Referral*, the Commission declined to rule on factual disputes between the parties, finding resolution of such facts was unnecessary on the primary jurisdiction referral, which requested an interpretation of section 2.1.8. *Id.*, 18 FCC Rcd at 21825, para. 18 & n.87. The Commission concluded that any disputed facts should be addressed by the district court, which -- as petitioners themselves previously argued -- was the original forum before which an evidentiary record had been compiled. *Id.* at n.87. These decisions were not disturbed by the Court of Appeals.

¹³ *E.g.*, Request for Declaratory Rulings (filed Sept. 27, 2006); Comments of AT&T in Opposition to Request for Declaratory Rulings (filed Dec. 20, 2006); Joint Petition for Declaratory Ruling, Internal File No. CCB/CPD 96-20 (filed July 15, 1996); Comments of AT&T Corp. in Opposition to Joint Petition for Declaratory Ruling and Joint Motion for Expedited Consideration, Internal File No. CCB/CPD 96-20 (filed Aug. 26, 1996); Comments of 800 Discounts, Inc., One Stop Financial, Inc., Winback and Conserve Program Inc., Group Discounts, Inc., Internal File No. CCB/CPD 96-20 (filed Apr. 2, 2003); AT&T Corp. Further Comments, Internal File No. CCB/CPD 96-20 (filed Apr. 2, 2003); Reply Comments of 800 Discounts, Inc., One Stop Financial, Inc., Winback and Conserve Program Inc., Group Discounts, Inc., Internal File No. CCB/CPD 96-20 (filed Apr. 15, 2003); AT&T Corp. Further Reply Comments, Internal File No. CCB/CPD 96-20 (filed Apr. 15, 2003); *see also* Letter from Alfonse G. Inga to Marlene Dortch, Secretary, FCC (filed Feb. 28, 2003); Letter from Alfonse G. Inga, President, The Inga Companies, to Judith Nitsche and Secretary, FCC (filed Apr. 23, 2003); Letter from Aryeh Friedman, Senior Attorney, AT&T, to Judith Nitsche, Assistant Division Chief, Pricing Policy Division, FCC (filed Apr. 28, 2003); Letter from Alfonse G. Inga, The Inga Companies, to Judith Nitsche and Secretary, FCC (filed May 5, 2003).

¹⁴ We note that 800 Services, Inc., an entity not a party to the proceedings before the Commission, also filed a request for an extension of time to file additional comments. *See* Request for Extension of Time to File Reply Comments (filed Dec. 29, 2006). The extension until January 31, 2007 to file reply comments is granted to all commenters.